

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

2010 SEP 21 AM 9:27

FOURTH JUDICIAL DISTRICT

James R. Williams,

Plaintiff,

v.

Orlando Henry "Tubby" Smith,
individually,

Defendant.

BY DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

Case Type: Contract
Judge Regina M. Chu

File No. 27-CV-09-16611

ORDER

James R. Williams,

Plaintiff,

v.

The Board of Regents of the University
of Minnesota, and Joel Maturi, individually
and in his capacity as the Athletic Director
for the University of Minnesota,

Defendants.

Case Type: Contract
Judge Regina M. Chu

File No. 27-CV-07-22194

The above-entitled matters came duly on for a hearing before the Honorable Regina M. Chu, Judge of District Court, on the 20th day of August, 2010, upon Defendant Board of Regents of the University of Minnesota and Orlando Henry "Tubby" Smith's motion for judgment as a matter of law, motion for a new trial, and/or motion for remittitur. Brian Slovut, Esq., and Jennifer Frisch, Esq., appeared on behalf of Defendants. Donald C. Mark, Jr., Esq., Alyson M. Palmer, Esq., and Richard G. Hunegs, Esq., and appeared on behalf of Plaintiff.

Based upon the argument of counsel, and all of the files, records and proceedings herein, the Court being duly advised,

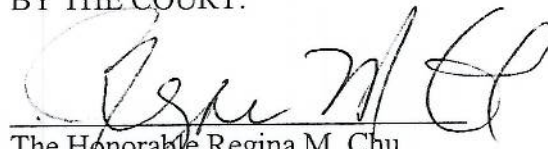
IT IS HEREBY ORDERED:

1. Defendant Board of Regents of the University of Minnesota and Orlando Henry "Tubby" Smith's request to strike Plaintiff James R. Williams's Supplemental Memorandum of Law in Opposition to Defendants' Post-Trial Motions dated August 24, 2010 is GRANTED.
2. Defendant Board of Regents of the University of Minnesota and Orlando Henry "Tubby" Smith's motion for judgment as a matter of law is DENIED.
3. Defendant Board of Regents of the University of Minnesota and Orlando Henry "Tubby" Smith's motion for a new trial is DENIED.
4. Defendant Board of Regents of the University of Minnesota and Orlando Henry "Tubby" Smith's motion for remittitur is GRANTED.
5. An amended judgment shall be entered in favor of Plaintiff James R. Williams against Defendant Orlando Henry "Tubby" Smith and Defendant The Board of Regents of the University of Minnesota, jointly and severally, in the amount of \$1,000,000.00
6. The attached Memorandum is incorporated into this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: September 21, 2010

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Regina M. Chu', is written over a horizontal line.

The Honorable Regina M. Chu
Judge of District Court

MEMORANDUM

I. Introduction

On May 26, 2010, a jury returned a verdict finding Defendants Orlando Henry “Tubby” Smith and the University of Minnesota liable for negligent misrepresentation. The jury determined that Coach Smith had negligently misrepresented the extent of his hiring authority and that as a result of the misrepresentation Plaintiff James Williams suffered damages in the amount of \$1,247,293.00. Defendants now bring a motion alleging that certain legal errors occurred at trial that entitle them to judgment as a matter of law or a new trial. In the alternative, Defendants request that the amount of the judgment be reduced. In weighing Defendants’ motion, the Court recognizes that the jury is the sole finder of fact. Absent a significant error of law or other procedural irregularity at trial, the jury’s verdict cannot be disturbed.

The jury in this case carefully considered the evidence and decided in Plaintiff’s favor. That decision should stand. As a matter of law, however, the damages award must be reduced to the one million dollar limit of the University’s insurance policy. A legal analysis of each of Defendants’ motions follows.

II. Motion for Judgment as a Matter of Law

Defendants bring a motion for judgment as a matter of law pursuant to Rule 50 of the Minnesota Rules of Civil Procedure. A motion for judgment as a matter of law may be granted only “when a jury’s verdict has no reasonable support in fact or is contrary to law.” *Kidwell v. Sybaritic, Inc.*, 749 N.W.2d 855, 861 (Minn. App. 2008) (citing *Diesen v. Hessburg*, 455 N.W.2d 446, 452 (Minn. 1990)). Defendants argue that they are entitled to judgment as a matter of law because: (1) the Court lacks subject matter

jurisdiction over the case presented by Plaintiff; (2) it was unreasonable as a matter of law for Plaintiff to rely upon a government official's representation of authority; and (3) it was unreasonable as a matter of law for Plaintiff to rely upon a government official's representations when the government official was not the exclusive source of the misrepresented information. The Court will now consider each of Defendants' arguments.

A. Subject Matter Jurisdiction

Citing separation of powers principles, Defendants argue that the District Court lacks subject matter jurisdiction over the case presented by Plaintiff. Under separation of powers principles, employment decisions of the executive branch of government are given deference by the courts. *See Willis v. County of Sherburne*, 555 N.W.2d 277, 281 f.2 (Minn. 1996). As such, the only method available for review of University of Minnesota employment decisions is by issuance of writ of certiorari from the court of appeals.¹ *Williams v. Board of Regents of the University of Minnesota*, 763 N.W.2d 646, 651 (Minn. App. 2009) (citing *Maye v. Univ. Of Minn.*, 615 N.W.2d 383, 385 (Minn. App. 2000)).

Plaintiff failed to seek timely review by writ of certiorari and instead filed the present action in District Court. Plaintiff alleged, among other causes of action, common law claims for breach of contract, equitable estoppel, and negligent misrepresentation. This Court initially dismissed all causes of action, concluding that it lacked subject matter

¹ Review by writ of certiorari is limited to "questions affecting jurisdiction of the [executive agency or entity], the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Willis*, 557 N.W. at 281 f.2.

jurisdiction over Plaintiff's common law claims. The court of appeals affirmed dismissal of all claims except Plaintiff's negligent misrepresentation theory, saying that:

District court consideration of this negligent misrepresentation claim could be limited to a determination of whether the university, through Smith, provided [Plaintiff] with false information that [Plaintiff] reasonably relied on by resigning as an assistant coach with OSU. Unlike the estoppel claims, the district court would focus on the representation, [Plaintiff's] reliance, and whether [Plaintiff] incurred losses as a result of reliance on the alleged misrepresentation. These are considerations that do not intrude substantially on or challenge the university's internal decision-making process. . . . Because the actual hiring decision is not at issue and is not directly implicated, we conclude the district court erred by dismissing [Plaintiff's] negligent misrepresentation claim on the pleadings[.]

Williams, 763 N.W.2d at 652.

Defendants argue that the case presented by Plaintiff at trial directly challenged the University's internal decision-making and the ultimate decision not to hire Plaintiff. In support of this argument, Defendants point to character evidence introduced by Plaintiff, as well as evidence concerning the University's failure to investigate Plaintiff's exemplary background before making its hiring decision. Although evidence of this nature touched upon issues outside the jurisdictional province of the jury, such evidence was relevant to Plaintiff's remaining claim. An essential element of a claim for negligent misrepresentation is a plaintiff's reasonable reliance on the misrepresentation. The University argued at trial that due to his past "major" NCAA violations, Plaintiff should have known Athletic Director Joel Maturi would never have approved of his hiring. To rebut this argument, Plaintiff submitted testimony that in 2007, he was held in such high regard - both professionally and personally- that it was reasonable for him to believe that

the NCAA violations would not be a problem for the University (and implicitly that Coach Smith had the final say on the offer).²

Moreover, to insure the jury remained properly focused, the Court repeatedly instructed the jury that the sole issue was whether Smith negligently misrepresented the extent of his hiring authority and that “[w]hether the University’s decision was justified or not justified is not an issue in this case. Whether the process relating to that decision was proper or improper is not before you.” (Jury Instruction – Plaintiff’s Claims.) The jury heard this instruction several times during the trial. Each juror also had a copy of the instruction during deliberations.

The special verdict form further clarified the relevant issue – it asked whether Smith made a false representation, whether Smith exercised reasonable care, whether Plaintiff relied upon Smith’s representation and whether Plaintiff’s reliance was reasonable. The special verdict form did not ask whether the University’s employment decision was justified. With respect to damages, the special verdict form asked what amount would adequately compensate Plaintiff “for damages caused by relying on [Smith’s] representation that he had final authority to hire assistant basketball coaches[.]” (Special Verdict Form.) At no time did the jury answer any questions regarding the University’s decision-making processes or the decision not to hire Plaintiff. To the contrary, the Court repeatedly instructed the jury not to consider such issues. Therefore, the case presented by Plaintiff was within the subject matter jurisdiction of the Court.

² There were several occasions when Plaintiff elicited testimony or presented evidence that might be construed as challenging the University’s decision-making process. As discussed in section III.B of this memorandum, these instances were minor and were remedied by a curative instruction.

B. Reliance Upon Coach Smith's Misrepresentation

Defendants assert two arguments relating to the reasonableness of Plaintiff's reliance upon Smith's misrepresentation. First, Defendants allege that as a matter of law there can be no reasonable reliance upon an erroneous representation of authority by a government official. Second, Defendants claim that a government official's liability for negligent misrepresentation is limited to circumstances in which the government official is the exclusive source of the information. In support of these arguments, Defendants cite cases in which government was protected from liability for alleged misrepresentations made in the course of performing essential government functions.

As fully outlined in the Order and Memorandum denying summary judgment dated March 8, 2010, government is protected against liability for negligent misrepresentations to ensure that the prospect of tort liability does not inhibit performance of essential government functions or otherwise "frustrate dialogue which is indispensable to the ongoing operation of government." *Northernair Productions, Inc. v. County of Crow Wing*, 244 N.W.2d 279, 282 (Minn. 1976). These policy concerns are not implicated when government is acting in a proprietary, rather than governmental, manner. Instead, affording the right to seek recovery merely imposes the same liabilities upon government when acting in a proprietary manner that is currently imposed upon private citizens.

Here, reason dictates that a plaintiff with a claim against a state university coach ought to be entitled to the same redress he would have against a coach at a privately-owned institution. Where the University operates a revenue-generating sports program, it should be held to the same responsibilities as a privately-owned sports team. For this and

all other reasons articulated in the Order and Memorandum dated March 8, 2010, Defendants are not entitled to judgment as a matter of law merely because they are state actors.

C. Duty of Care

Defendants argue that an employer owes no duty to disclose to a prospective employee whether the person extending a job offer has authority to make such an offer. In support of this argument, Defendants cite *Stowman v. Carlson Companies, Inc.*, 430 N.W.2d 490 (Minn. App. 1988). In *Stowman*, the Minnesota Court of Appeals held that a prospective employer has no duty “to disclose to a job applicant confidential negotiations to sell its company” because the disclosure of such information could mislead potential investors and might implicate federal securities regulations. *Id.* at 493. Coach Smith’s purported job offer to Plaintiff is distinguishable from the circumstances in *Stowman*. Coach Smith misrepresented that he had full and final authority to extend a job offer. The identity of the person with authority to extend a job offer is not confidential and does not potentially implicate the interests of investors or other third parties.

Defendants also cite *Safeco Insurance Company of America v. Dain Bosworth Inc.*, 531 N.W.2d 867 (Minn. App. 1995), which involved a negligent misrepresentation claim by an insurer against an underwriter of municipal bonds. After noting that the insurer and underwriter were sophisticated parties engaged in arm’s length negotiations, the court of appeals held that the underwriter owed no general duty of disclosure when negotiating for the purchase of surety bonds from the insurance company. *Id.* at 871-73. The court noted that the plaintiff-insurer was in the business of assessing risk and that the parties were negotiating a commercial transaction as sophisticated equals. *Id.*

The relationship between Plaintiff and Defendants is distinguishable from the relationship in *Safeco*. A prospective employee must rely upon certain representations made by an employer, particularly representations concerning who has authority to extend a job offer. The prospective employer is in a better position to know who has authority to extend an offer of employment and generally is a superior bargaining position. See *Griesi v. Atlantic General Hospital Corp.*, 756 A.2d 548, 556 (Maryland 2000) (noting that employer has control of information necessary for prospective employer to fully understand job offer). Thus, a prospective employer who volunteers information to a prospective employee is under a general duty to exercise reasonable care to ensure his or her words do not mislead the other party. See *M.H. v. Caritas Family Services*, 488 N.W.2d 282, 288 (Minn. 1992) (noting that “even if one has no duty to disclose a particular fact, if one chooses to speak he must say enough to prevent the words from misleading the other party”); *Faimon v. Winona State University*, 540 N.W.2d 879, 885 (Minn. App. 1996) (implicitly recognizing a negligent misrepresentation claim in the employment context); *Yeitrakis v. Schering-Plough Corp.*, 804 F.Supp. 238, 242 (D. N.M. 1992) (holding that fact issue existed concerning whether prospective employer made negligent misrepresentations to prospective employee about job security); *Browne v. Maxfield*, 33 F.Supp. 1193, 1203 (E.D. Pa. 1987) (finding prospective employment candidate could pursue negligent misrepresentation claim against prospective employer).

The jury determined that Coach Smith negligently misrepresented that he had full and final authority to extend a job offer. At the time of this misrepresentation, Coach Smith owed a general duty to exercise reasonable care. See *Caritas*, 488 N.W.2d at 282.

Therefore, Defendant's motion for judgment as a matter of law on the grounds that Coach Smith owed no duty is denied.

D. Reasonableness of Plaintiff's Reliance

Defendants argue Plaintiff could not have reasonably relied upon Coach Smith's representations because, at the time in which Plaintiff submitted his written resignation to Oklahoma State University, Plaintiff knew that Joel Maturi had to approve hiring decisions. Although Coach Smith informed Plaintiff on April 3 that Maturi had to approve new hires, Plaintiff informed Oklahoma State Coach Sean Sutton on the evening of April 2 of his decision to accept a position at Minnesota. There was sufficient evidence from which the jury could reasonably find that Plaintiff had effectively resigned his position with Oklahoma State when he verbally informed Oklahoma State's head coach that he was resigning and accepting a coaching position with a competing team.

Defendants argue that there was no specific discussion of hiring authority on the evening of April 2, and therefore Coach Smith could not have falsely represented that he had final hiring authority. Plaintiff testified that Coach Smith offered him an assistant coaching position. The offer included a specific salary - \$175,000 per year plus \$25,000 per year from basketball camps. Coach Smith and Plaintiff also discussed upcoming recruiting trips. Under these circumstances, there was ample evidence to support the jury's finding that Coach Smith made misrepresentations about his hiring authority. Therefore, Defendants' motion for judgment as a matter of law is denied.

III. Motion for a New Trial

Defendants also bring a motion for a new trial. Under Rule 59.01 of the Minnesota Rules of Civil Procedure, the Court may grant a new trial motion due to: (1)

irregularity in the proceedings whereby the moving party was deprived of a fair trial; (2) misconduct of the jury or prevailing party; (3) excessive damages that appear to be given under the influence of passion or prejudice; (4) errors of law occurring at trial; or (5) a verdict that is contrary to law. Defendants allege that a new trial is warranted because: (1) the damages awarded by the jury were excessive and reflect a failure on the part of the jury to follow the law; (2) Plaintiff's counsel engaged in misconduct by making improper and irrelevant arguments; (3) the Court erred in admitting certain evidence; and (4) the Court failed to give jury instructions requested by Defendants.

A. Excessive Damages

A motion for a new trial based upon lack of evidence to support a jury's verdict "should not be granted unless the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence or acted under some mistake or from some improper motive, bias, feeling or caprice, instead of honestly and dispassionately exercising its judgment." *Lamb v. Jordan*, 333 N.W.2d 852, 855-56 (Minn. 1983) (citing *LaValle v. Aqualand Pool Co.*, 257 N.W.2d 324, 328 (Minn. 1977)). A Court should not grant a new trial merely because it disagrees with the jury's verdict; rather, the verdict must be "so inadequate or excessive that 'it could only have been rendered on account of passion or prejudice.'" *Rush v. Jostock*, 710 N.W.2d 570, 577 (Minn. App. 2006) (citing *Flanagan v. Lindberg*, 404 N.W.2d 799, 800 (Minn. 1987)).

Defendants argue that there is no evidentiary basis for the nearly \$1.25 million verdict and that, at most, Plaintiff established damages in the amount of \$158,000 – the amount remaining on Plaintiff's Oklahoma State contract. Defendants claim that the damage award is so excessive that the jury must have been acting out of passion or

prejudice. To evaluate this argument, it is necessary to determine whether there was a reasonable basis for the jury to find damages in the amount of \$1.25 million.

Plaintiff presented evidence from which the jury could reasonably conclude that Coach Smith's misrepresentation caused Plaintiff to resign from Oklahoma State. There was also evidence suggesting that the misrepresentation significantly impaired Plaintiff's ability to obtain new employment. Plaintiff testified about his considerable efforts to locate employment, and there was substantial evidence regarding Plaintiff's qualifications and earning capacity. Considering this evidence as a whole, there was a reasonable basis from which the jury could find damages in the amount of \$1.25 million. While there was evidence suggesting that Plaintiff failed to mitigate his damages, the weighing of such evidence was within the province of the jury. *See Thompson v. Hughart*, 664 N.W.2d 372, 378 (Minn. App. 2003). Because there was a reasonable basis for the jury's finding regarding damages, Defendant's motion for a new trial on the grounds of excessive damages is denied.

B. Attorney Misconduct

Defendants allege that they are entitled to a new trial because of misconduct on the part of Plaintiff's counsel. Specifically, Defendants claim that counsel repeatedly challenged the University's decision not to hire Plaintiff despite being instructed to avoid such arguments. To receive a new trial due to attorney misconduct, the moving party must demonstrate misconduct on the part of counsel and that "the misconduct clearly resulted in prejudice to the losing party." *Eklund v. Lund*, 222 N.W.2d 348, 350 (Minn. 1974).

There were several minor instances in which Plaintiff's attorney asked questions or made arguments that challenged the University's decision-making processes. In closing arguments, for example, Plaintiff's counsel told the jury that:

There isn't a better person, person of greater character, person of greater integrity, person of greater honesty. And yet, the University wants to talk about what happened 25 and 30 years ago as if that's the only thing that counts. Shame on them.

(Slovut Aff. Ex. C. at 128-29.) Counsel then provided examples of well-known figures who redeemed themselves, including former German scientist Wernher Von Braun, former U.S. Senator Ted Kennedy, and former Congressman James Ramstad. This argument directly challenged the University's decision not to hire Plaintiff, which was a challenge that this Court previously ruled to be improper.³

Despite this, the Court finds that Defendants were not prejudiced. The instances in which counsel made improper arguments were limited and generally minor. Moreover, for those few instances in which counsel did make improper argument, the Court provided curative instructions that focused the jury's attention on the relevant issues. *See Edlund*, 222 N.W.2d at 362 (noting that cautionary instructions can substantially negate possible prejudice arising out of improper argument). The jury heard the curative instruction multiple times throughout the trial and had a copy of it in the deliberation room. The evidence reasonably supported the jury's verdict, and there is no basis to believe that the limited improper argument made by counsel prejudiced Defendants. Therefore, Defendants motion for a new trial based upon attorney misconduct is denied.

³ While counsel's argument violated the Court's pretrial ruling, there is no reason to believe that counsel acted in bad faith or deliberately engaged in misconduct.

C. Character Evidence

Defendants challenge the introduction of evidence regarding Plaintiff's character. Defendants argue that such evidence was inadmissible under rule 608, which provides that "[t]he credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation . . . only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." Minn. R. Evid. 608(a). Evidentiary rulings are generally within the broad discretion of the trial court and "[e]ntitlement to a new trial on the grounds of improper evidentiary ruling rests upon the complaining party's ability to demonstrate prejudicial error." *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990) (citing *Reinhardt v. Colton*, 337 N.W.2d 88, 93 f.1 (Minn. 1983)).

Plaintiff called two character witnesses to testify about Plaintiff's reputation and good character. The purpose of this testimony was twofold. First, evidence of Plaintiff's character was relevant to the reasonableness of Plaintiff's reliance upon Coach Smith's misrepresentation. Defendants argued at trial that Plaintiff's reliance was unreasonable because he should have known that his past conduct would raise alarms at the University. Evidence of Plaintiff's current reputation and good character implies that the University may no longer have concerns about 30 year-old violations. Second, Defendants introduced evidence regarding the wrongful acts that lead to Plaintiff's past NCAA violations. These violations were decades old and had a tendency to unfairly portray Plaintiff as having a bad character.⁴ Under these circumstances, it was appropriate to

⁴ Defendants sought to introduce evidence of the nature of the NCAA violations to give the jury a context. Similarly, evidence of Plaintiff's good character provides the jury a context as to how Plaintiff was regarded and why his reliance may have been reasonable.

allow limited character evidence to rebut the negative character implications associated with the NCAA violations.

D. Expert Testimony

Defendants argue that it was error to allow Plaintiff's experts to testify regarding standard industry practice when hiring assistant basketball coaches at NCAA Division I institutions. Under rule 702 of the Minnesota Rules of Evidence, expert testimony is admissible when the expert's "specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." The "admissibility of expert testimony generally rests within the sound discretion of the district court." *State v. Blanche*, 696 N.W.2d 351, 372 (Minn. 2005) (citing *State v. Koskela*, 536 N.W.2d 625, 629 (Minn. 1995)).

Defendants argue that expert testimony about industry practice at major NCAA institutions is irrelevant because the University does not follow the industry practice. Both Plaintiff and Coach Smith were experienced coaches who were familiar with the standard practices at major NCAA institutions. There is no evidence that Coach Smith advised Plaintiff that the University's hiring practices deviated from those of virtually every other major NCAA institution. Thus, even if the University does not follow industry practice, Plaintiff may still have acted reasonably when relying upon Coach Smith's representations. Plaintiff's expert testimony assisted the jury in understanding why an experienced assistant coach may rely upon Coach Smith's statements concerning his hiring authority.

Defendants argue that Plaintiff's two experts were not qualified because neither of them coached in 2007. Plaintiff's experts – James Brandenburg and Eddie Sutton – were

former head basketball coaches at major NCAA institutions. Brandenburg coached for 22 years and is still involved in referee oversight for the Big 12 conference. Sutton coached for nearly 40 years. Sutton and Brandenburg testified that they had specific experience in hiring assistant coaches. They further testified that an industry practice existed and that their decades of experience gave them familiarity with the industry practice in 2007. Brandenburg and Sutton adequately explained the basis of their knowledge, including how they were familiar with industry practice in 2007. Given this testimony, the Court finds no error in allowing expert testimony from Brandenburg and Sutton.

E. Requested Jury Instructions

Defendants argue that the jury should have received three requested instructions relating to modification of a written contract and the reasonableness element of a negligent misrepresentation claim. District courts have “considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction.” *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002) (citing *Alholm v. Wilt*, 394 N.W.2d 488, 490 (Minn. 1986)). A party is entitled to a new trial only if the instructions considered in their entirety “destroys the substantial correctness of the charge as a whole, causes a miscarriage of justice, or results in substantial prejudice.” *Morlock*, 650 N.W.2d at 159 (citing *Lindstrom v. Yellow Taxi Co. of Minneapolis*, 214 N.W.2d 672, 676 (Minn. 1974)).

The instructions requested by Defendants were redundant and argumentative. The jury received general instructions regarding the relevant law and there has been no showing as to why additional instructions were necessary. See *Weiby v. Wente*, 264

N.W.2d 624, 628 (Minn. 1978) (noting that “general charges are preferred to more specific instructions”). Defendants fail to offer any argument as to how the failure to give their requested instructions “destroy[ed] the substantial correctness of the charge as a whole[.]” See *Morlock*, 650 N.W.2d at 159. In fact, Defendant’s requested instructions tended to unfairly emphasize their theory of the case. For these reasons, Defendants’ motion for a new trial is denied.

IV. Remittitur

Citing the Minnesota Tort Claims Act, Defendants seek reduction of the judgment to \$1,000,000.00. Under the Tort Claims Act, the “total liability of the state and its employees acting within the scope of their employment on any tort claim shall not exceed” \$300,000.00 or the amount of any liability insurance, whichever is higher. Minn. Stat. § 3.736 subd. 4(a), 8. In this case, the University maintains a one-million dollar insurance policy covering claims of this nature.

Defendants argue that the Tort Claims Act is inapplicable because Coach Smith was sued in his individual capacity.⁵ The statute, however, provides a cap on the “total liability of the state and its employees acting within the scope of their employment[.]” Minn. Stat. § 3.736 subd. 4. Coach Smith is a state employee who was acting within the scope of his employment at the time in which he misrepresented the extent of his hiring authority.⁶ Therefore, the judgment against Defendants must be reduced to the University’s insurance policy limit of \$1,000,000.00.

⁵ Several days after the hearing on Defendants’ motions, Plaintiff submitted a Supplemental Memorandum of Law in Opposition to Defendants’ Post-Trial Motions. The Court did not authorize this submission and nothing in the rules provides for an unsolicited submission after a motion hearing. Defendants were prejudiced by this submission because they have no opportunity to respond. Therefore, the Court is granting Defendants’ request to strike this submission.

⁶ The Tort Claims Act defines “scope of office or employment” as meaning that “the employee was acting on behalf of the state in the performance of duties or tasks lawfully assigned by competent authority.”

V. Conclusion

Defendants' motions for judgment as a matter of law and for a new trial are denied. The Court has subject matter jurisdiction over Plaintiff's claims and there was a reasonable basis for the jury's verdict. Plaintiff's counsel committed no prejudicial misconduct and Defendants have failed establish any other grounds that would entitle them to a new trial. Under the Minnesota Tort Claims Act, the judgment in favor of Plaintiff must be reduced to the total amount of the University's liability insurance.

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Minn. Stat. § 3.732 subd. 1(3). At the time in which Coach Smith made the misrepresentation, he was performing a duty assigned to him by the University; namely, he was attempting to hire an assistant coach. There is no dispute that Coach Smith was attempting to further the interests of the University by extending the job offer. The University knew Coach Smith was recruiting assistant coaches and the offer was reasonably related to Smith's employment. In sum, Coach Smith was acting on behalf of the state in the performance of duties lawfully assigned to him when he misrepresented the extent of his hiring authority.